



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 25 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Doug Stolowski
Environmental Health and Safety Manager
Gopher Resource, LLC
685 Yankee Doodle Road
Eagan, Minnesota 55121

Re: Notice and Finding of Violation
Gopher Resource, LLC
Eagan, Minnesota

Dear Mr. Stolowski:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Gopher Resource, LLC (Gopher) for violations of the Clean Air Act (CAA) identified at the facility located at 685 Yankee Doodle Road, Eagan, Minnesota (the Facility). The NOV/FOV is issued in accordance with Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3).

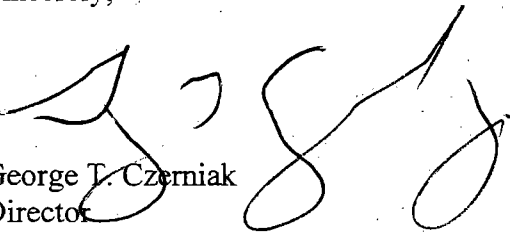
As outlined in the attached NOV/FOV, the EPA finds that Gopher has violated the CAA, the Facility's Title V operating permit, the National Emissions Standards for Hazardous Air Pollutants (NESHAP) General Provisions (40 C.F.R. Part 63, Subpart A), the NESHAP for Secondary Lead Smelting (40 C.F.R. Part 63, Subpart X), and the Minnesota State Implementation Plan. Section 113 of the CAA, 42 U.S.C. § 7413, gives us several enforcement options to resolve these violations. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Eleanor Kane. You may call her at (312) 353-4840 or email her at kane.eleanor@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Christopher Swanberg, Gopher Resource, LLC
Katie Koelfgen, Minnesota Pollution Control Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Gopher Resource, LLC

Proceedings Pursuant to
Sections 113(a)(1) and (a)(3)
of the Clean Air Act

42 U.S.C. §§ 7413(a)(1) and (a)(3)

**NOTICE OF VIOLATION AND
FINDING OF VIOLATION**

EPA-5-16-MN-12

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency is issuing this Notice of Violation and Finding of Violation (NOV/FOV) to Gopher Resource, LLC (Gopher) to notify you that we have found violations of the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, and its implementing regulations at the Gopher facility located at 685 Yankee Doodle Road, Eagan, Minnesota (the Facility). The statutory and regulatory background, factual background, findings of violation, and the environmental impact of these violations are set forth in detail below.

This NOV/FOV is issued in accordance with Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3), which authorizes the Administrator to take certain enforcement actions after notifying a person that it is in violation of the CAA. The Administrator has delegated the authority to issue this NOV/FOV to the Regional Administrator, who in turn has re-delegated that authority to the Director of the Air and Radiation Division for Region 5 of the EPA.

Statutory and Regulatory Background

National Emission Standards for Hazardous Air Pollutants

1. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires the EPA to promulgate a list of all categories and subcategories of new and existing "major sources" of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.
2. "Stationary source" is defined as "any building, structure, facility, or installation, which emits or may emit any air pollutant." 42 U.S.C. § 7411(a)(3).
3. "Hazardous air pollutant" is defined as "any air pollutant listed in or pursuant to" Section 112(b) of the CAA, and includes, among other pollutants, lead compounds. 42 U.S.C. § 7412(a)(6).

4. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. *See also* 40 C.F.R. §§ 61.05 and 63.4.

The NESHAP for Secondary Lead Smelting

5. Pursuant to Section 112 of the CAA, the EPA has promulgated a NESHAP for Secondary Lead Smelting, which has been amended periodically and is codified at 40 C.F.R. Part 63, Subpart X (the Secondary Lead NESHAP). *See* 60 Fed. Reg. 32587 (June 23, 1995); 62 Fed. Reg. 32216 (June 17, 1997); 64 Fed. Reg. 4572 (January 29, 1999); 64 Fed. Reg. 69643 (December 14, 1999); 70 Fed. Reg. 75320 (December 19, 2005); and 77 Fed. Reg. 555 (January 5, 2012). Under the Secondary Lead NESHAP, the Facility's compliance date for the comprehensive amendments promulgated on January 5, 2012, was January 6, 2014. On January 3, 2014, EPA issued a direct final rule amending the Secondary Lead NESHAP amending certain regulatory text to clarify compliance dates and provisions relating to monitoring of negative pressure in total enclosures. 79 Fed. Reg. 367, 372 (Jan. 3, 2014)
6. In 40 C.F.R. § 63.542, "total enclosure" is defined as "a containment building that is completely enclosed with a floor, walls, and a roof to prevent exposure to the elements and to assure containment of lead bearing material with limited openings to allow access and egress for people and vehicles. The total enclosure must provide an effective barrier against fugitive dust emissions such that the direction of air flow through any openings is inward and the enclosure is maintained under constant negative pressure."
7. 40 C.F.R. § 63.544(c)(1) requires that facilities ventilate the total enclosure continuously to ensure negative pressure values of at least 0.013 mm of mercury (0.007 inches of water).
8. 40 C.F.R. § 63.548(k) states that the source must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure. To demonstrate compliance with the standard for differential pressure, facilities must maintain the pressure in total enclosures such that the average pressure in any 15-minute period does not fall below the level specified in § 63.544(c)(1). The 15-minute averages must include at least one reading per minute. 40 C.F.R. § 63.548(k)(4); *see also* 40 C.F.R. § 63.10(b)(2)(vii).
9. 40 C.F.R. § 63.548(j) requires that sources demonstrate continuous compliance with the total hydrocarbon (THC) and dioxin and furan (D/F) emissions standards.
10. 40 C.F.R. § 63.548(j)(1) states that sources must install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in § 63.8.
11. 40 C.F.R. § 63.548(j)(3) requires that sources monitor and record the temperature of the afterburner or the furnace exhaust streams every 15 minutes during the initial

performance or compliance test for THC and D/F and determine an arithmetic average for the recorded temperature measurements.

12. 40 C.F.R. § 63.548(j)(4) states that to demonstrate continuous compliance with the emission standards for THC and D/F, you must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50°F) below the average established pursuant to § 63.548(j)(3).
13. 40 C.F.R. § 63.545(f) states that, "as provided in § 63.6(g), as an alternative to the requirements specified in this section, you can demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in this section."
14. 40 C.F.R. § 63.547(a)(5) specifies that, when testing to determine compliance with lead compound emission standards, facilities must use Method 12 or 29 with a minimum sample volume of 2.0 dry standard cubic meters, or 70 dry standard cubic feet (dscf), for each run.
15. Table 1 of the Secondary Lead NESHAP incorporates 40 C.F.R. § 63.8(c)(2)(i) by reference, which provides that all continuous monitoring systems, such as differential pressure monitors, must be installed such that representative measures of emissions are obtained.

The Minnesota State Implementation Plan

16. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of EPA (Administrator) a plan which provides for the implementation, maintenance and enforcement of all national primary or secondary standards established pursuant to Section 109 of the CAA, 42 U.S.C. § 7409. These State Implementation Plans (SIPs) are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.
17. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, the Administrator approved Minn. R. 7011.0020 as part of the federally enforceable SIP for Minnesota on May 24, 1995. 60 Fed. Reg. 27411.
18. The Minnesota Administrative Rules, at 7011.0020, prohibits circumvention, stating that "no owner or operator may install or use a device or means that conceals or dilutes emissions, which would otherwise violate a federal or state air pollution control rule, without reducing the total amount of pollutant emitted."

Title V Permit Program

19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.
20. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program

to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

21. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.
22. On December 4, 2001, EPA provided full and final approval for the State of Minnesota Title V operating permit program. See 40 C.F.R. Part 70, Appendix A. 66 Fed. Reg. 62967.
23. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
24. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by the EPA.

Gopher Title V Permit Requirements

25. The Facility operates under a Title V Permit, Air Emission Permit No .03700016-004, first issued by MPCA on June 29, 2010 (Title V Permit). This permit was modified on September 10, 2013, and October 4, 2013.
26. The Title V Permit requires compliance with the provisions of the Secondary Lead NESHAP that are applicable to the Facility.

Relevant Factual Background

27. Gopher owns and operates a secondary lead smelting stationary source located at 685 Yankee Doodle Road, Eagan, Minnesota (the Facility).
28. The Facility is a secondary lead smelter and is therefore subject to the requirements of the Secondary Lead NESHAP (40 C.F.R. Part 63, Subpart X).
29. EPA conducted an inspection of the Facility on June 9, 2014, to assess compliance with the CAA.
30. EPA sent an information request to the Facility under Section 114 of the CAA, dated February 18, 2015 (2015 Information Request).
31. Gopher provided a response to the 2015 Information Request dated April 22, 2015.

Total Enclosure Negative Pressure

32. From January 6, 2014, through December 31, 2014, one or more of the three differential pressure monitors used to demonstrate compliance with the total enclosure requirements of the Secondary Lead NESHAP indicated a failure to maintain -0.007 inches of water or

did not record a reading during 3,051 of the fifteen-minute time intervals. These instances represented 8.8% of the total time during that period.

33. At two of the three differential pressure monitors used to demonstrate compliance with the total enclosure standards of the Secondary Lead NESHAP, Gopher installed wind shields in October 2013.

THC and D/F Compliance Demonstration

34. On December 12, 2013, EPA issued a letter to Gopher approving a proposed alternative method for the East Reverberatory Furnace, allowing the continuous monitoring of natural gas flow in lieu of monitoring the afterburner temperature. EPA's approval imposed certain conditions including, among other things, requirements to:
 - a. Establish a minimum required natural gas flow using the average natural gas usage during a performance test demonstrating compliance with THC and D/F emission standards;
 - b. Show compliance with the THC and D/F standards at the East Reverberatory Furnace by maintaining natural gas usage at or above the natural gas flow limit established during the performance test; and
 - c. Continuously record natural gas usage.
35. On June 9 and 10, 2014, Gopher performed emissions testing at the East Reverberatory Furnace and Blast Furnace to demonstrate compliance with the THC and D/F standards and establish a minimum required natural gas flow. When calculated per the requirements of EPA's December 12, 2013 letter approving the alternative monitoring method, the minimum required natural gas flow is 22,929 cubic feet per minute (cfm).
36. From January 6, 2014, through March 8, 2015, there were 1,044 hours during which the East Reverberatory Furnace was operating and the recorded natural gas usage was below the minimum established during testing. These instances represent 10.9% of the furnace operating time.
37. When the Blast Furnace is in operation alone, or when the West Reverberatory Furnace is in use, the alternative monitoring method for the East Reverberatory Furnace is not in effect. During these times, Gopher must show continuous compliance with THC and D/F limits, by operating such that the furnace exhaust remains above an established minimum temperature.
38. Gopher has not established a minimum compliance furnace exhaust temperature, nor has it obtained EPA approval for an alternative monitoring method, for the Blast Furnace or the West Reverberatory Furnace to demonstrate compliance with THC and D/F limits.
39. From January 6, 2014, through March 8, 2015, there were 594 hours during which only the Blast Furnace operated, and 504 hours during which the West Reverberatory Furnace was in use.

Lead Performance Testing

40. On June 9 and 10, 2014, Gopher performed emissions testing at the East Reverberatory Furnace and Blast Furnace to demonstrate compliance with lead emission standards. The average sample volume collected during each run of the test was 46.7 dscf.

Findings of Violations

Total Enclosure Negative Pressure

41. Gopher violated 40 C.F.R. § 63.544(c)(1) and the Title V Permit by operating its facility without continuously maintaining negative pressure at the total enclosure.
42. Gopher violated 40 C.F.R. § 63.8(c)(2)(i), and the Title V Permit by installing windshields at two of the three differential pressure monitors used to demonstrate compliance with the total enclosure standards of the Secondary Lead NESHAP. . See also Minn. R. 7011.0020

THC and D/F Compliance Demonstration

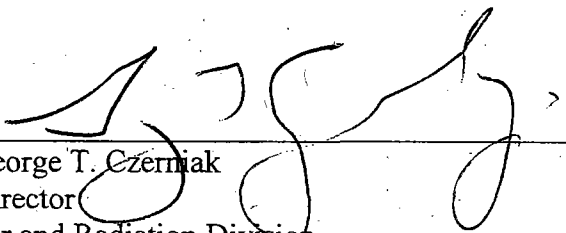
43. Gopher violated 40 C.F.R. § 63.548(j) and the Title V Permit by failing to maintain the minimum natural gas flow when operating the East Reverberatory Furnace, as allowed per the alternative monitoring method approved by EPA pursuant to 40 C.F.R. § 63.6(g).
44. Gopher violated 40 C.F.R. § 63.548(j)(1), (3) and (4) and the Title V Permit by failing to establish and maintain a minimum furnace exhaust temperature when operating the Blast Furnace alone, or when the West Reverberatory Furnace was in use.

Lead Performance Testing

45. Gopher violated 40 C.F.R. § 63.547(a)(5) by failing to use an adequate sample volume when performing compliance testing for lead at the East Reverberatory Furnace and Blast Furnace.

Date

11/25/15


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-16-MN-02 by Certified Mail, Return Receipt Requested, to:

Doug Stolowski
Environmental Health and Safety Manager
Gopher Resource, LLC
685 Yankee Doodle Road
Eagan, Minnesota 55121

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

Christopher G. Swanberg
Vice President, Environmental, Health & Safety
Gopher Resource
6505 Jewel Ave.
Tampa, Florida 33619

Katie Koelfgen
Manager, Land and Air Compliance
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

On the 25th day of November 2015.

7014 2870 0001 9581 3710

 for

Kathy Jones, Program Technician
AECAB, PAS